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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte DAIMLER AG

Appeal 2009-015203
Application 10/535,735
Technology Center 3600

Before JAMESON LEE, RICHARD TORCZON, and
SALLY GARDNER LANE, *Administrative Patent Judges*.

LEE, *Administrative Patent Judge*.

DECISION ON APPEAL[1]

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[1] The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the "MAIL DATE" (paper delivery mode) or the "NOTIFICATION DATE" (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

A. STATEMENT OF THE CASE

This is a decision on appeal by an Appellant, whose real party in interest is Daimler AG ("Daimler"), under 35 U.S.C. § 134(a) from a final rejection of claims 30-36 and 42-56. We have jurisdiction under 35 U.S.C. § 6(b). We *reverse*.

References Relied on by the Examiner

Leimbach[2]	DE 10065724 A1	April 7, 2002

The Rejection on Appeal

The Examiner rejected claims 30-36 and 42-56 under 35 U.S.C. § 102(b) as anticipated by Leimbach.

The Invention

The invention relates to a method and device for stabilizing a vehicle combination formed by a trailer and a towing vehicle. (Spec. 1:¶¶ 0002-3.)[3] The stabilization is accomplished through the application of a braking force, termed "braking interventions," to wheels of the towing vehicle so as to counteract a detected rolling movement, *i.e.*, unstable motion, of the vehicle combination. (*Id.* at 8-9: ¶¶ 0021-23.) As explained in Daimler's Specification, there are two forms of braking intervention. In one form, oscillating braking force is applied to the wheels which generates a yaw

[2] The Examiner relied upon US 2004/0080209 A1 as an English translation of Leimbach. Daimler does not dispute that the US publication is an accurate translation of Leimbach. References in this opinion to page and paragraph numbers of Leimbach are to the US publication.

[3] References to page and paragraph numbers in Daimler's Specification are to the Substitute Specification filed May 20, 2005.

moment to counteract the vehicle rolling movement. (*Id.* at 9: ¶¶ 0024-25.) In the second form, a uniform or constant braking force is applied which does not produce a yaw moment and instead operates to provide a vehicle stopping force. (*Id.*)

Claim 30 is reproduced below (App. Br. 15 Claims App'x.):

> 30. A method for stabilizing a vehicle combination of a trailer or semi-trailer and a towing vehicle having front wheels and rear wheels, said method comprising:
>
> determining and evaluating at least one dynamic movement input variable;
>
> implementing at least braking interventions for stabilizing a dynamic movement state of the vehicle combination for the towing vehicle when a rolling movement of the vehicle combination is detected upon evaluating the at least one dynamic movement input variable;
>
> producing a yaw moment that counteracts the rolling movement of the vehicle combination by braking interventions applied to the front wheels of the towing vehicle; and
>
> implementing braking interventions at the rear wheels of the towing vehicle that effect essentially constant braking at the rear wheels only when a predefined operating state of the vehicle combination is present.

B. ISSUE

Did the Examiner properly find that Leimbach discloses the feature of applying braking interventions at the front wheels of a towing vehicle to produce a yaw moment that counteracts the rolling movement of a trailer and towing vehicle combination?

C. PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d 705, 708 (Fed. Cir. 1990).

D. FACTS AND ANALYSIS

The Examiner rejected claims 30-36 and 42-56 as anticipated by Leimbach. Claims 30 and 56 are independent claims. Claims 31-36 and 42-55 are ultimately dependent on and argued collectively with claim 30.

Claim 30 is directed to a method for stabilizing a vehicle combination of a trailer and a towing vehicle. Claim 30 recites that braking interventions occur for the wheels of the vehicle towing upon detection of rolling movement of the vehicle combination. Specifically, claim 30 includes the following feature (App. Br. 15 Claims App'x.):

> producing a yaw moment that counteracts the rolling movement of the vehicle combination by braking interventions applied to the front wheels of the towing vehicle[.]

Claim 56 is directed to a device for stabilizing a trailer and towing vehicle combination and includes a similar feature. That feature reads (*id.* at 22 Claims App'x.):

> wherein a yaw moment that counteracts the rolling movement of the vehicle combination is produced by the braking interventions at the front wheels of the towing vehicle[.]

Thus, the above-quoted features of claim 30 and 56 require that breaking interventions which produce a yaw moment are applied to the front wheels of the towing vehicle to counteract the rolling movement of the trailer and towing vehicle combination.

The Examiner found that the pertinent features of claim 30 and 56 are disclosed at paragraphs 0002 and 0031 of Leimbach. (Ans. 8:6-16.) Those paragraphs of Leimbach describe that a braking regulation system for a vehicle determines an individual brake pressure for each wheel of the vehicle. Daimler challenges the Examiner's finding, contending Leimbach's disclosed control of brake pressure for the individual wheels of a vehicle is insufficient to account for the application of braking interventions to the front wheels of a towing vehicle to produce a yaw moment counteracting a rolling movement.

We agree with Daimler. As described in Daimler's Specification, brake pressure may be applied to a wheel in a manner that does not produce a yaw moment, *i.e.*, pressure applied in a constant or uniform fashion. (Spec. 9: ¶¶ 0024-25.) The paragraphs in Leimbach relied on by the Examiner do not provide any detail as to the manner in which Leimbach's brake pressure is applied. More specifically, Leimbach does not disclose that its pressure is applied at the front wheels so as to produce a "yaw moment." Paragraph 0031 does refer to a "yaw rate sensor" which detects a vehicle's "yaw rate." That detected "yaw rate," however, is not the same as the "yaw moment" in Daimler's claims because the "yaw rate" is an effect already present in the motion of the vehicle. That is, the detected yaw rate is pre-existing before braking pressure is applied. Daimler's claims, on the other hand, require that the "yaw moment" be generated by the braking interventions. On this record, the Examiner has not adequately explained how or where Leimbach discloses that its breaking pressures are applied at the front wheels so as to produce the required yaw moment that counteracts a rolling movement of a trailer and towing vehicle combination.

Anticipation is established only when a single prior art reference discloses all elements of the claimed invention. *In re Spada*, 911 F.2d at 708. We have reviewed the anticipation rejection advanced by the Examiner and find that it is improper as it does not account for all the features of Daimler's claims. As the Examiner has not made any rejection based on obviousness, we take no position as to the obviousness of Daimler's claimed invention.

We do not sustain the rejection of claims 30 and 56 as anticipated by Leimbach.

E. CONCLUSION

The Examiner did not properly find that Leimbach discloses the feature of applying braking interventions at the front wheels of a towing vehicle to produce a yaw moment that counteracts the rolling movement of a trailer and towing vehicle combination.

F. ORDER

The rejection of claims 30-36 and 42-56 under 35 U.S.C. § 102(b) as anticipated by Leimbach is reversed.

REVERSED

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